



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/372,474      | 08/11/1999  | ELDON E. BAIRD       | 238/168             | 1434             |

7590 05/17/2002

Richard J. Warburg, Esq.  
FOLEY & LARDNER  
P.O. Box 80278  
San Diego, CA 92138-0278

EXAMINER

MARSCHER, ARDIN H

ART UNIT

PAPER NUMBER

1631

DATE MAILED: 05/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

|               |             |                       |                     |
|---------------|-------------|-----------------------|---------------------|
| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
| 09/372474     |             |                       |                     |

|          |              |
|----------|--------------|
| EXAMINER |              |
|          |              |
| ART UNIT | PAPER NUMBER |
|          | 24           |

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run \_\_\_\_\_ or continues to run 3 mons from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 5/6/02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
  - c. ☒ They raise the issue of new matter. (See Note).
  - d. ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: NEW MATTER is proposed for R5 options in claim 49 of 1-6 when pg 6, lines 3-5 of the spec. only disclose 0-6 as the range being within basis as filed. Although the basis for parameter "p" being 0-12 has been disclosed as described on pg 16 of the spec. This is a new issue not presented until after final thus requiring fresh consideration and/or search.

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: none

Claims objected to: none

Claims rejected: 1-5, 38, and 42-49

However;

☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because affirmative of the amdt as noted above thus leaving the clms rejected as before.
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☒ Other Copy of En. Int. Sum

*Ardin H. Marschel*  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER